

### REMARKS

1. It is noted that the Office Action states that claims 1-40 are pending and stand rejected. Claims 4, 14, 24, and 34, however, were canceled in the amendment and response filed on April 26, 2004.

This communication cancels claims 2, 8, 18, 22, 28, and 38; amends claims 1, 5-7, 9, 11, 12, 15-17, 19, 21, 25-27, 29, 31, 32, 35-37, and 39; and adds claims 41-46.

2. It is further noted that the indication of allowable subject matter in claims 4-7, 14-17, 24-27, and 34-37 and the finality of the previous Office Action have been withdrawn.

3. Claims 1-3, 8, 10-13, 18, 20-23, 28, 30-33, 38 and 40 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,436,101 to Hamada.

In response, the subject matter of previously canceled claims 4, 14, 24, and 34, has been canceled from respective independent claims 1, 11, 21 and 31 and rewritten as new dependent claims 41-44, respectively. In further response, independent claims 1, 11, 21, 31 have been amended to recite -- the upper and lower surfaces defining a body thickness that continuously decreases from the anterior end to the posterior end -- ; dependent claims 12 and 32 have been amended to be consistent with the amendments made to respective independent claims 11 and 31; and claims 2, 8, 18, 22, 28, and 38 have been canceled.

Hamada does not disclose, teach or suggest an instrument or system comprising the presently recited structure of independent claims 1, 11, 21, and 31. Accordingly, independent claims 1, 11, 21, and 31 are allowable over Hamada.

Remaining dependent claims 3 and 10; 12, 13, and 20; 23 and 30; and 32, 33, and 40 depend directly or indirectly from respective amended independent claims 1, 11, 21, 31 which are allowable over Hamada. For at least this reason, remaining dependent claims 3 and 10; 12, 13, and 20; 23 and 30; and 32, 33, and 40 are also allowable over Hamada. Accordingly, withdrawal of this rejection is respectfully requested.

4. Claims 9, 19, 29 and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hamada.

Dependent claims 9, 19, 29 and 39 have been amended to be consistent with the amendments made to independent claims 1, 11, 21 and 31, from which they respectively depend. As discussed above, presently amended independent claims 1, 11, 21 and 31 are allowable over Hamada. For at least this reason, dependent claims 9, 19, 29 and 39 are also allowable over Hamada. Accordingly, withdrawal of this rejection is respectfully requested.

5. Claims 4-7, 14-17, 24-27, and 34-37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hamada in view of U.S. Patent No. 5,432,365 to Waldman.

Dependent claims 4-7, 14-17, 24-27 and 34-37 depend from respective claims 1, 11, 21 and 31. As discussed above, presently amended independent claims 1, 11, 21 and 31 are allowable over Hamada. Waldman fails to cure the deficiencies of Hamada because Waldman does not teach or suggest an instrument or system comprising upper and lower surfaces that define a body thickness that continuously decreases from the anterior end to the posterior end, as presently claimed. For at least this reason, dependent claims 4-7, 14-17, 24-27 and 34-37 are allowable over Hamada in view of Waldman. Accordingly, withdrawal of this rejection is

respectfully requested.

6. New independent claim 45 recites an instrument for distracting a disc space between adjacent vertebrae and simultaneously preparing endplates of the vertebrae. The instrument comprises: a body having opposing upper and lower surfaces separated by curved side surfaces which extend between a posterior end of the body and an anterior end of the body; a first plurality of teeth defined by the upper surface of the body; and a second plurality of teeth defined by the lower surface of the body; wherein the body having a thickness measured between edges of the first and second plurality of teeth, the thickness continuously decreasing from an anterior-most pair of the first and second plurality of teeth to a posterior-most pair of the first and second plurality of teeth. The prior art cited of record does not disclose, teach or suggest such an instrument.

7. New independent claim 46 recites a system for distracting a disc space between adjacent vertebrae and simultaneously preparing endplates of the vertebrae. The system comprises: at least two differently dimensioned instruments, each of the instruments including: a body having opposing upper and lower surfaces separated by curved side surfaces which extend between a posterior end of the body and an anterior end of the body; a first plurality of teeth defined by the upper surface of the body; a second plurality of teeth defined by the lower surface of the body; and the body having a thickness measured between edges of the first and second plurality of teeth, the thickness continuously decreasing from an anterior-most pair of the first and second plurality of teeth to a posterior-most pair of the first and second plurality of teeth. The prior art cited of record does not disclose, teach or suggest such a system.

8. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1, 3, 5-7, 9-13, 15-17, 19-21, 23, 25-27, 29-33, 35-37, and 39-46 are in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

9. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,



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